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# Classroom Litigation in the First Semester of Law School -- An Approach to Teaching Legal Method at Harvard

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on writing style, philosophy of management, or sociology of group behavior; the piece simply describes this law school's experiences, mistakes, failures, successes, and results. At the present, improvements are being made by the two instructors who handle the legal bibliography program, and other beneficial changes will come in the future. Other law schools with different traditions, faculties, facilities and financing have achieved or will report different results. The Wake Forest experience is one illustration of what can be done in minimal time with maximum effort and enthusiastic student and administration support. Development of the program demonstrates that a law school can get a new legal bibliography program together in one year, an intermediate program in the second year, and can be ready for clinical appellate practice for students by the third year. Other projects, such as the elimination competition and encouragement of extramural moot court competition, can be fitted in as early as the first year, depending on student interest and enthusiasm.

In this sort of program, the rule is, The sooner the better; students who graduate ahead of implementation of the program lose its benefits.

## CLASSROOM LITIGATION IN THE FIRST SEMESTER OF LAW SCHOOL—AN APPROACH TO TEACH- ING LEGAL METHOD AT HARVARD

GENE R. SHREVE \*

### *Introduction*

In law schools across the country, students would find it to their advantage to count practice and problem solving in litigation among their earliest classroom experiences. Such experiences can provide greater understanding of the judicial process and of the development of cases used in their typically "case method" first year courses. Such experiences can also help to prepare students for clinical work which might begin as early as the second year of law school. Finally, classroom litigation can provide an excellent means of teaching a course in Legal Method.

The following concerns a course which I created and taught for the past two years at Harvard Law School.<sup>1</sup> The course is built upon a teaching case extended over a number of weeks and requiring the students to adopt various litigation roles. I will explain and assess the course, including in my discussion an examination of its relation to current trends and questions raised in legal education, particularly education in the first year of law school.

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<sup>1</sup> This paper was originally prepared as an address to the Wisconsin Law School faculty in January, 1975. The author wishes to thank Professor David F. Cavers of Harvard Law School and Mr. David Rosenberg, formerly Director, Harvard Law School Legal Methods Program, for their helpful suggestions in the subsequent preparation of this paper.

### A. Background

The teaching case<sup>2</sup> comprised about twenty classroom hours of instruction and represented the last two-thirds of Harvard's course in Legal Method. It followed work in legal bibliography and a study of materials introducing beginning law students to law and legal institutions.<sup>3</sup> The teaching case was characterized by two broad pedagogical concepts: prolonged and progressive development of a single case<sup>4</sup> and student participation through simulation<sup>5</sup> and role playing.<sup>6</sup> The concepts are combined in the teaching case to pursue the following goals:

- (1) To assist students in understanding the law-fact relationship in legal problem-solving.
- (2) To provide students with a sense of litigation.
- (3) To aid students in perceiving themselves as law students and lawyers to be.

What follows is a theory of instruction<sup>7</sup> for Legal Method toward realization of these course goals.

<sup>2</sup> A limited number of copies of the course materials are available to interested law teachers and may be obtained by writing the author at Vermont Law School, South Royalton, Vermont, 05068.

<sup>3</sup> The teaching case is preceded by a series of cases, taught by all Legal Method teaching fellows, depicting the law of product liability in New York from 1923 to 1963. Ordinarily the general case does not develop or even relate to the substantive questions raised in the product liability materials. Rather, the teaching case is developed to realize course goals, *infra*, existing apart from any substantive field. The research, writing and introduction to law functions of Legal Method are well established. *See, i. e.*, Packer and Ehrlich, *New Directions in Legal Education* 28-29 (1972) and Marple, *infra* n. 5.

<sup>4</sup> Use of this technique is illustrated in Professor Mermin's excellent book, *Law and the Legal System—An Introduction* (1972).

<sup>5</sup> *See* Botein, *Simulation and Role Playing in Administrative Law*, 26 J.Leg.Ed. 234 (1974), Ordovery, *An Experiment in Classroom Litigation*, 26 J.Leg.Ed. 98 (1973) and Marple, *The Basic Legal Techniques Course at Catholic University School of Law: First Year Lawyering Skills*, 26 J.Leg.Ed. 556 (1974).

<sup>6</sup> For transcripts of classroom role playing exercises for trial practice and client counselling, *see* Keeton, *Class Action*, *Law and Learning* 22 (Summer, 1974) and Watson, *Know Thyself Know Thy Client*, *Law and Learning* 45 (Spring, 1974).

An example of the techniques of prolonged development of one case and simulation and role playing combined in one course is Professor David Shapiro's course in Federal Litigation at Harvard which served as an inspiration for the teaching case.

<sup>7</sup> According to Professor Jerome S. Bruner, Professor of Psychology and Director of the Center for Cognitive Studies at Harvard,

"[a] theory of instruction should specify the experiences which most effectively implant in them a predisposition toward learning . . . . Second, a theory of instruction must specify the ways in which a body of knowledge should be structured so that it can be most readily grasped by the learner . . . . Third, a theory of instruction should specify the most effective sequences on which to present the materials to be learned . . . . Finally, a theory of instruction should specify the nature and pacing of rewards and punishments in the process of learning and teaching." *Toward a Theory of Instruction* 40-41 (1968),

### B. *Scope of Assignments*

The teaching case began with a student interview of the plaintiff and proceeded from complaint to trial with intermediate activity at interlocutory relief, discovery and motion to dismiss levels. The students all began by representing plaintiff and were divided into plaintiff's and defendant's counsel prior to the discovery assignment.

During the case, students explored and experienced relationships with clients by interviewing and counselling, with opposing counsel by negotiation and with the court by written and oral argument. Students engaged in the three stages of legal problem solving, analysis, planning and execution,<sup>8</sup> through the drafting of complaints and discovery, pretrial argument and finally trial.

### C. *Materials*

Materials used in the course were of the following description: (1) Multilithed readings were distributed weekly. They contained cases, rules, text and commentary. They were the sole source of law for solving problems in the case. (2) "Shell" or partially completed material was distributed for the drafting assignments. The students had to supply the missing parts, for example, the fact allegations and causes of action portions of the complaint. Pleadings and court papers prepared by the students were subsequently replaced by models which were discussed and which became part of the official case file. (3) Documents surfaced throughout the case, by process of client interview, discovery and subpoena to produce at trial. (4) Role information was provided to actors recruited from the second and third year classes. Facts in the case originated either from documents or from the actors through interview or trial testimony.

### D. *The Case*<sup>9</sup>

My teaching case, *Kovic v. Brook Village*, was set in the United States District Court for the District of Massachusetts. It involved the attempted eviction of Oscar Kovic (plaintiff) and his family by nonprofit landlord Brook Village, Inc. (defendant). Plaintiff alleged the eviction to be in retaliation against his tenant organizing activities within defendant's apartments. There were three main issues in the case.

- (1) Whether the First and Fourteenth Amendments are enforceable against Brook Village, a private party,
- (2) If so, whether Brook Village intended the eviction of plaintiff Kovic in retaliation against his tenant organizing activities,

<sup>8</sup> Inasmuch as the students were required to act upon the decisions they made, they were forced to a degree of activity and commitment in their problem solving characteristic of legal practice.

"For law is applied social science. It needs to draw on all the learning and wisdom it can get. But in the end it must make do with what it has, and work out the least objectionable solution. The professional lawyer is essentially a problem-solver, dealing with concrete and immediate problems which somehow or other must be solved." Hart and Sacks, *The Legal Process: Basic Problems in the Making and Application of Law*, 202-203 (tent. ed. 1958).

*Cf. Cavers, Skills and Understanding*, 1 J.Leg.Ed. 395, 396 (1948).

<sup>9</sup> For other fact situations which have been devised for classroom litigation, see *Ordover supra* n. 5, at 100-103 and *Marple supra* n. 5, at 560.

(3) If so, whether Oscar Kovic's tenant organizing activities were within the protection of the First Amendment.

(1) *Applicability of the First and Fourteenth Amendments to defendant Brook Village, a private party.*

By motion to dismiss, defense counsel urged that the court lacked subject matter jurisdiction over the case. Defendant argued that since it was privately owned and operated, it was beyond the reach of the First and Fourteenth Amendments.

Plaintiff's counsel obtained, by discovery, documents demonstrating that the construction of Brook Village was financed by an insured, low interest mortgage under Section 221(d)(3) of the National Housing Act and that the City of Gloucester donated the land upon which Brook Village was constructed and gave Brook Village tax exempt status in return for an agreement with the city housing authority to provide certain of Brook Village's apartments to poverty level tenants.

These documents provided a record for decision for the motion to dismiss. Plaintiff's counsel argued that defendant's government involvement and government-like operation were sufficient to bring it within the reach of the amendments. Certain of counsel for plaintiff and defendant argued the motion in class and all students wrote briefs.<sup>10</sup>

(2) *Motivation for defendant's intended eviction of the Kovic family.*

Through discovery plaintiff's counsel obtained a confidential notebook of defendant's apartment manager (since deceased) and correspondence between the manager and the chairman of the board of Brook Village tending to show that the decision not to renew the Kovic lease was connected at least in part to Kovic's tenant activities. Plaintiff's counsel made their case at trial from this evidence, the direct examination of Kovic and another tenant and the cross-examination of the chairman of the defendant's board.

The position of the defense was that Brook Village declined to renew the Kovic lease because of physical damage done to the Kovic apartment and because Kovic had harassed neighboring tenants. They relied on certain admissions by Kovic contained in a letter to the manager, repair bills and the testimony of another tenant. Both sides argued from the "chief reason" test for motive developed by Judge Wyzanski in *McQueen v. Druker*, 317 F. Supp. 1122 (D.Mass.1970).

(3) *Do Kovic's activities warrant protection under the First Amendment?*

Counsel for defendant attempted to establish at trial that, whatever the motivation for the intended eviction, the violent and disruptive character of a demonstration led by Kovic immediately prior to the decision not to renew the Kovic lease placed Kovic outside the protection of the First Amendment. It was undisputed at trial that Kovic led a demonstration at the First Church of Gloucester, the moving force behind nonprofit Brook Village, Inc. How-

<sup>10</sup> Students base their work here upon *McQueen v. Druker*, 317 F.Supp. 1122 (D. Mass.1970), *affirmed*, 438 F.2d 781 (1 Cir. 1971), *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), *Moose Lodge v. Irvis*, 407 U.S. 163 (1972), *Marsh v. Alabama*, 326 U.S. 501 (1946), and *Lloyd v. Tanner*, 407 U.S. 551 (1972). *Jackson v. Metropolitan Edison*, 419 U.S. 345 (1974), would now have to be added to the list.

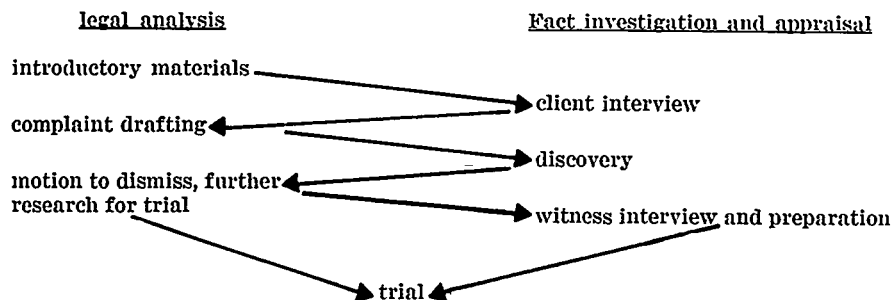
ever, testimony of plaintiff's and defendant's witnesses varied concerning the disruptive or intimidating nature of the demonstration and its effect on the congregation when they attempted to leave the church building at the conclusion of services. Chief among the questions: was the congregation in effect trapped inside the church, and, if so, for how long?<sup>11</sup>

With an idea of the course in mind, let us now turn to the development of the course goals set forth earlier.

#### E. *Understanding the Law-Fact Relationship in Legal Problem Solving*

Students are told, correctly, that they cannot properly appreciate the facts of a problem without knowledge of legal rules but that they cannot appreciate the use or purpose of legal rules without an appreciation of particular factual settings. Gaining entry into the process of legal reasoning, the search for applicable rules is fundamental. It is also highly perplexing to most beginning students. Much of the energy of first year teaching is devoted to the development of intellectual toughness and resiliency sufficient to cope with this process. The case method dialectic is the most frequent example.<sup>12</sup> The general case offered a somewhat different and highly complementary approach to the problem.

The teaching case provided a setting for students to participate in an evolving process of determining legally significant facts within the framework of the case. As the students moved toward trial they traveled back and forth from the realm of legal analysis to the realm of fact investigation and appraisal in the following manner.



During this process, students were engaged in a simultaneous narrowing of possible, useful facts and applicable legal rules<sup>13</sup> until, finally, they creat-

<sup>11</sup> Students base their work here upon *Cohen v. California*, 403 U.S. 15 (1971), *Coates v. Cincinnati*, 402 U.S. 611 (1971), *Cox v. Louisiana*, 379 U.S. 536 (1965) and *Massachusetts Welfare Rights v. Ott*, 421 F.2d 525 (1 Cir. 1960). Here as elsewhere the students learned as much from their mistakes as anything else. At the conclusion of trial, the witnesses told the class what they could have testified to had they been properly interviewed and prepared.

<sup>12</sup> For further discussion of the place occupied by the case method in the first year curriculum, see n. 26, *infra*.

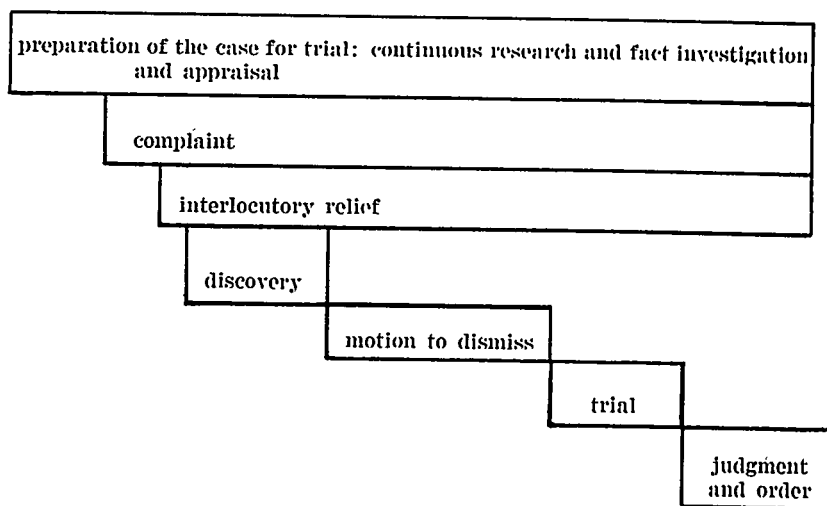
<sup>13</sup> In identifying "characteristics of the legal professional," Packer and Ehrlich quote Dean Bayless Manning on "those special capacities of the lawyer to distin-

ed and argued from a record for decision in the case. Students worked under laboratory conditions. In a small, closely supervised setting, they demonstrated for themselves how the process of legal reasoning applied to problem solving.

#### F. *Conveying a Sense of Litigation*

Obviously a developing comprehension of litigation is essential for beginning students. Litigation is the source of cases hence case method materials in the first year curriculum. It is omnipresent in Civil Procedure. Again, the general case provides a different yet highly complementary approach to traditional first year teaching methods.

The teaching case offered students a three dimensional perspective in litigation. Integrated and overlapping cycles of activity within the case may be illustrated as follows:



Students observed the cumulative effect of decisions made and actions taken in one case. The culmination of each cycle affected the result reached at trial and helped to explain it.

By the end of trial, students had a first understanding of the nature and significance of a record for decision.<sup>14</sup> They began to understand why particular evidence was in the record, how it got there and how the judge might be expected to react to it. The development of a case file was also helpful. Model court papers became subjects of analysis and critique in classroom

guish A from B, to separate the relevant from the irrelevant, to sort out a tangle into manageable sub-components, to examine a problem, surveying it from many different perspectives." *Supra* n. 3, at 22.

<sup>14</sup> "A properly conceived litigation course offers an experience which simply is not available to the student in any other forum. In this forum he is lead counsel on a case of some complexity. Unlike appellate moot court he begins at the beginning, creates his record and develops the tactics and legal theories he will pursue. He must overcome determined opposition and persuade a skeptical court at every stage of the proceedings—both orally and in writing." Ordovery, *supra* n. 5, at 99-100.

discussion. Moreover, students had to manage and therefore understand the significance of an increasing amount of court papers, memoranda and investigatory notes as the case proceeded to trial.

G. *Aiding Students in their Perception of Themselves as Law Students and Lawyers-to-Be*

The teaching case required three written assignments (complaints, discovery and brief on motion to dismiss) and two oral assignments (a pretrial argument and a trial role) from each student.<sup>15</sup> These assignments provided an ongoing means for me to monitor students' comprehension of the course. But they also served the broader purpose of enabling students to express to some extent intellectual growth and identity during the first semester of law school.<sup>16</sup> Even modest success during this period had quite a salutary effect on students' confidence and self-respect.<sup>17</sup>

<sup>15</sup> Actually, even the oral assignments had written components, since each student had to file a completed form prior to oral argument explaining his or her plan of argument. These were commented upon and returned in the manner of a written assignment.

<sup>16</sup> Students surveyed by questionnaire at the conclusion of each year's course strongly felt that there were not enough oral and written exercises. If possible, the course should be expanded to permit more. I am inclined to agree with Professor Johnstone's gloomy appraisal of the general state of writing skills teaching in law schools:

"The general level of law student writing competence is lower than it should be, and a deplorable number of law students write badly, unable to express themselves on paper with clarity and precision or to organize their ideas effectively. Many are also seriously deficient in the formalities of spelling, punctuation, and grammar. Not only are they unable to do a respectable job of writing tightly phrased legal instruments, but many law students even by the time they graduate lack the raw writing skill necessary to prepare convincing advocate or scholarly pieces of a less compact character. The law schools have given insufficient attention to their students' writing deficiencies and have taken the position either that the problem is not their responsibility but that of the high schools and colleges or that as law schools they have more important things to do. They are also faced with the reluctance if not outright refusal of law professors to invest in editing of student written work the tremendous amounts of time required for improvement in writing proficiency by a substantial number of students." *Student Discontent and Educational Reform in the Law Schools*, 23 J.Leg.Ed. 255, 273 (1970).

<sup>17</sup> Anxiety and general lack of self-confidence has frequently been noted as real and sufficiently pronounced to be a matter of considerable concern. Note, *Anxiety and the First Semester of Law School*, 1968 Wisc.L.Rev. 1201, Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U.Cin.L.Rev. 91 (1968), Sarason, Sarason and Cowden, *For Some Students Dying Begins with Graduation*, 1 Law and Learning 44 (Fall, 1974), Patton, *The Student, the Situation, and Performance During the First Year of Law School*, 21 J.Leg.Ed. 10 (1968), Zaremski, *The First Year in Law School: The Intention Is to Make You Feel Like Less than a Human Being*, 1 Law and Learning 51 (Summer, 1973), Kennedy, *How the Law School Fails: A Polemic*, 1 Yale Review of Law and Social Action 71 (Spring, 1970), and Packer and Ehrlich, *supra* n. 3, at 30.

The source of student anxiety is not altogether clear. Whether it is generated by law school treatment of the students or by the students themselves is a matter of some controversy. Compare Kennedy *supra* with Stone, *Legal Education on the Couch*, 85 Harv.L.Rev. 392 (1971).

It is probably fair to say that apprehension about and ambivalence toward a professional career in law would create a certain amount of student uneasiness, see Stone *supra* and Sarason *supra*. But it is probably also fair to say that the Socratic



A great strength of the teaching case was the extent to which it aided students in their understanding of legal practice, hence in their perception of themselves as lawyers-to-be.<sup>18</sup> The pressure upon lawyers to produce results in given task settings was simulated continuously.<sup>19</sup> Students faced ethical problems<sup>20</sup> and client pressures as well as problems.<sup>21</sup>

Each class was visited by two attorneys who in their practice generally represent clients similar to Kovic and Brook Village.<sup>22</sup> A poverty lawyer

method, used so extensively in the first year, exacerbates student tension. Professor Fuller's description of a classroom scene, though offered in praise of the Socratic method, reveals its nerve wracking effects.

"You are sitting, let us say, in a class in Contracts, or Personal Property, or Domestic Relations. John Smith on the third row is reciting on a case, and has got the facts confused, or he has misread the Restatement section in the footnote. A dozen hands are up, and a dozen eager faces reflect the desire to close in for the kill. The professor delays the moment of slaughter and deliberately passes over the volunteer matadors in order to call on Dick Jones in the tenth row. The professor knows from previous experience that he can count on Jones not only not to set Smith right, but to introduce a new misconception that will transfer the error to a still deeper level of confusion. Jones performs according to expectation. More hands go up as more of the class come to share the illumination, taking it either from an inner flame or from the whispered coachings of neighbors." *On Teaching Law*, 3 *Stan.L.Rev.* 35, 40 (1950).

Prolonged exposure to the Socratic method can leave a student without any clear sense of accomplishment in class, see Wisconsin note *supra*, at 1202 and Patton *supra*, at 27-29. But in the teaching case this was offset to a considerable degree for the students by doing work of their own and having it evaluated, often quite favorably.

<sup>18</sup> This student response to the survey was typical: "I think what I was looking for in Legal Methods was some guidance as to what the law was all about as a career, rather than just having some more 'substantive law' of the basic courses present." In its simulated contests the course may be said to proceed on a game theory which aids students in comprehending their future role. See Katsh and Katsh, *Preventing Future Shock: Games and Legal Education*, 25 *J.Leg.Ed.* 484, 485 (1973).

"Games themselves do not teach; instead, they help learning to occur. Education is, and should be, directed toward helping the student to understand his culture and toward preparing him to face his future encounters with society with some understanding and expertise. Because a student often has difficulty perceiving his future role, however, there is frequently a lag in motivation for learning. Game simulation can help to bridge this gap by providing an opportunity to view the future world and to learn from the experience. Parents, teachers, and even studies, often fail to convey quite accurately what lurks beyond the ivory tower and students are, therefore, often ill-prepared psychologically and practically for their new social positions and the "future shock" which many experience after leaving school. Games can assist in making the transition easier by bringing more of the realities of societal and interpersonal dealings into the realm of the students' lives."

<sup>19</sup> See n. 8 *supra*.

<sup>20</sup> The plaintiff decided that he wished to stage a large demonstration in the courtroom.

<sup>21</sup> As portrayed, Kovic was loud mouthed and obstreperous. The chairman of defendant's board was disorganized and rather stupid.

<sup>22</sup> Thus an attempt is made in the course to tap a neglected resource for legal education.

"It is a commentary on the lack of continuity between law school and law office that the schools have been able to make so little use of practitioners—in sharp contrast to the schools of medicine. The reason, however, is plain: the

visited when the questions of complaint and interlocutory relief were being considered. Several weeks later, an attorney from a blue chip Boston firm visited when the class was considering the preparation of defendant's case. The attorneys were provided with copies of the material beforehand. They addressed questions raised in the case and in analogous situations from their own practice. They answered any student questions.

The attorney visits proved to be one of the high points of the course.<sup>23</sup> Students were very curious about how private practice worked and they delighted in the anecdotes related by the attorneys. For their part, the attorneys worked hard to prepare for their visits and seemed almost as excited as the students. Enough time was spent addressing course materials that the visits could be considered part of the official business of the class.

#### H. *The Place of a Teaching Case in the First Year Curriculum*

Despite the obvious skills orientation of the teaching case, its consideration lies outside the smoldering "lawyer schools" controversy in legal education.<sup>24</sup> Whatever uncertainties exist over the continued desirability of the case method in the upper curriculum,<sup>25</sup> its importance as a primary teaching and learning device for the first year is widely acknowledged.<sup>26</sup> As I have stated earlier, a major goal of the teaching case is instead to complement the socratic teaching of the first year by permitting students to comprehend through skills tasks elements of legal reasoning or method important to their growth in the larger case method classes.<sup>27</sup>

law schools have not been concerned with those aspects of professional work that are developed in experience at the bar. They have concentrated on questions which a recent graduate may often be more competent to answer than a distinguished lawyer at the peak of his career. Fortunately, however, as greater attention is directed to the jobs that lawyers do, ways are likely to be found to utilize the experienced lawyer: in fact, some experiments are already exploiting this generally available resource." Cavers *supra* n. 8, at 401.

<sup>23</sup> Students in both years surveyed agreed that the attorney visits were highly enjoyable and added to comprehension of course material.

<sup>24</sup> Compare Frank, *A Plea for Lawyer-Schools*, 56 Yale L.J. 1303 (1947) and Cant-rall, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A.J. 307 (1952) with Griswold, *Legal Education: Extent to Which Know-How in Prac-tice Should be Taught in Law Schools*, 6 J.Leg.Ed. 325 (1954) and McClain, *Is Legal Education Doing Its Job? A Reply*, 39 A.B.A.J. 120 (1953).

<sup>25</sup> See, *i. e.*, Gellhorn, *The Second and Third Years of Law Study*, 17 J.Leg.Ed. 1 (1964).

<sup>26</sup> The value of the case method in the first year has been described as follows: Tied to the socratic technique it is especially effective as a first-year means of introducing students to formal legal reasoning and the relative significance of different sources of legal authority. Its concentration on individual appellate opinions gives a good sense of the incremental way in which bodies of legal rules evolve through the litigation process, and it is a valuable medium for developing student competence at predicting judicial behavior. Johnstone *supra* n. 16, at 265-266.

See, in addition, Llewellyn, *The Place of Skills in Legal Education*, 45 Colum.L.Rev. 345, 351 (1945)—Report of the Committee on Curriculum, Association of American Law Schools), Gellhorn *supra* n. 25, at 1-2, and Packer and Ehrlich *supra* n. 3, at 29.

<sup>27</sup> Two trends in the development of case method teaching would appear to in-crease the need for supplementation of the sort provided by the teaching case.

The workshop setting of the case provides a stimulus to learning altogether different from socratic teaching. In the relative intimacy of the small class, relationships with the instructor tend to be more open and direct. Student decision-making and the quality of their oral and written work to a large part determined the worth of the class, thus heavily involving the students in the education of themselves and each other.<sup>28</sup> One result of this kind of teaching was that students tended to be enthusiastic<sup>29</sup> about the course and to work quite hard in it.<sup>30</sup> Another result was that some students who were finding it difficult to learn from socratic teaching performed quite well under the stimulus of litigation workshop settings, proving the application of Professor Bruner's words: "The fact of individual differences argues for pluralism and for an enlightened opportunism in the materials and methods of instruction . . . . A curriculum, in short, must contain many tracks leading to the same general goal."<sup>31</sup>

What are the disadvantages in teaching the case? First, in terms of per pupil educational cost it is relatively expensive.<sup>32</sup> My general case classes could be no larger than about twenty students per section and three sections made up a full time teaching load for the ten week period during which the

First, Llewellyn observed, "we have now for decades been adding topics to the earlier case-books faster than we have been dropping topics out; and more 'subject matter' material in the same classtime means less time spent on, less sustained training on, 'method.'" *Supra* n. 26 at 254. Second is a "present trend . . . toward functional classification and the inclusion of more and more supplemental materials in the form of textual discussions by the editors, excerpts from law reviews or treatises, statutes, reports, forms, and other instruments" with similar results. Note, *Modern Trends in Legal Education*, 64 Colum.L.Rev. 710 (1964). In light of these trends extended concentration on closely related problems within one lawsuit provided by the teaching cases would seem particularly to complement the rest of the first year curriculum.

<sup>28</sup> "Learning-by-doing necessarily forces readjustment in the roles of student and teacher. The teaching-learning process becomes more of a partnership in a joint enterprise . . . . Learning by doing leads to the open-type classroom that stresses a student-oriented learning environment." Strong, *The Pedagogic Training of a Law Faculty*, 26 J.Leg.Ed. 226, 229 (1973). Also, see Gross, *On Law School Training and Analytic Skill*, 25 J.Leg.Ed. 261 (1973), Katsh, *supra* n. 18, at 490, and Ordovery, *supra*, n. 5, at 103.

<sup>29</sup> Surveys indicated a high degree of student enthusiasm and approval during both years the case was taught. Similar results were reported by Ordovery *supra* n. 5, at 104, Botein *supra* n. 5, at 240 and Marple, *supra* n. 5, at 564.

<sup>30</sup> One student surveyed wrote: "Kept me up late Tuesday nights but was well worth it." Another remarked: "I did more work on it than I planned and more than I needed to get by because I enjoyed it."

<sup>31</sup> *Supra* n. 7, at 71.

<sup>32</sup> The case method offers a substantial financial advantage in comparison since it can be taught with considerably larger classes. Johnstone *supra* n. 16, at 266. The impact of this financial difference would probably be most strongly felt by smaller law schools since they were reported to have "a substantially higher per-student instructional cost than the larger schools." Swords and Walwer, *The Costs and Resources of Legal Education* 7 (1974). The cost of offering a general case type of course would probably be close to that of clinical education, which, "if it is properly supervised, costs more than 'conventional' legal education, primarily because a teacher in a clinical setting can generally supervise fewer students than in a classroom setting." Packer and Ehrlich, *supra* n. 3, at 45.

course was taught.<sup>33</sup> Second, because of the need to concentrate on closely related problems within one lawsuit, the range of subject matter for the course is necessarily quite limited. Third, good teaching materials are virtually nonexistent. They can be created but this adds substantially to the time necessary to devote to the course.<sup>34</sup> Fourth, some measure of practicing experience is probably required of the instructor.<sup>35</sup> Finally, the mechanical details of simulating something as fluid and dynamic as lawsuit approaching trial required a degree of administrative superintendence which most law teachers would be unaccustomed to and would probably resent.<sup>36</sup> Headaches of this sort can be minimized to a degree through the use of student assistants.

Trends of curriculum development tend to favor course growth and diversification of teaching method in the second and third year of law school.<sup>37</sup> Still, attempts to complement the Socratic teaching of the first year have been made and doubtless will continue.<sup>38</sup> As one such effort, this teaching case "is not a cure, but a palliative. It is aimed at supplementing and improving, not replacing, the case method."<sup>39</sup> Students enjoy it and feel they learn a great deal from it. It is a model well worth further thought and experimentation.

<sup>33</sup> Botein suggested nineteen to twenty-five students as the desired number for his simulation course in administrative law and recommended that enrollment be limited to that range. *Supra* n. 5, at 236.

<sup>34</sup> At minimum, the time required to teach a course of this kind probably exceeds considerably the time required to teach a course with the same units of credit by case method. Botein wrote that "even if educationally sound, the course simply may not be worth the large amount of the instructor's time. Between arranging sessions, counseling students, and correcting papers, I spent thirty hours a week on the course. Normally I would spend perhaps ten or fifteen hours per week on a course which I had taught before." Botein *supra* n. 5, at 240. This is in line with my experience. Effort can be economized by teaching more than one section of the class and, as Botein goes on to point out, by using student assistants. But the enormous amount of time and effort required for this kind of course may limit the number of law teachers who try it.

<sup>35</sup> Several students surveyed thought that my experience in legal practice made the course work better. I think it helped in shaping the course and in responding to interest in and curiosity about legal practice which assignments in the course stirred up. One student found "discussion of the 'how to' of the legal process a refreshing addition to the emphasis on the 'why' of other courses."

<sup>36</sup> For example, facts are introduced into the case through a kind of "timed-release" technique. Certain facts must come in through the initial client interview, others can come in only by discovery, others through interview and preparation of witnesses before trial. Keeping track of documents to be distributed, making sure that actors have the right role information and get it out at the right time can be a pain but it is absolutely vital to the effectiveness of the course.

<sup>37</sup> Swords and Walwer, *supra*, n. 32, at 126. "[I]t is our conclusion that during the period examined nearly all of the significant expansion of educational programs of law schools took place in the upperclass program." Swords and Walwer also observed: "Expansion of the first-year curriculum at most schools, as a consequence of its fixed nature, occurs solely through the sectionalization of the basic course, and this happens only when the size of the first-year class becomes so large that it becomes necessary to sectionalize." *Id.*

<sup>38</sup> See Marple *supra*, n. 5 and Hyman, *First Year Student Participation at Northwestern Legal Clinic*, 1 Law and Learning 5 (Fall, 1974).

<sup>39</sup> This characterization was borrowed from a discussion of the problem method Columbia note *supra* n. 27, at 718.